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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

PRESIDING OFFICER'S
RULING NO. C2001-1/5

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

Complaint on Sunday and Holiday Collections

Docket No. C2001-1

PRESIDING OFFICER'S RULING ON
MOTION TO COMPEL THE UNITED STATES POSTAL SERVICE
TO RESPOND TO INTERROGATORY DFC/USPS-10(b)

(Issued July 18, 2001)

On June 21, 2001 Douglas F. Carlson filed a motion to compel the United States Postal Service to respond to interrogatory DFC/USPS-10(b).¹ Interrogatory DFC/USPS-10 states:²

To the extent that information and data are available, for each holiday listed in DFC/USPS-6:

- a. Please identify, for each year between 1986 and the present, every P&DC and P&DF that cancelled and processed outgoing First-Class Mail;
- b. Please provide, for each year between 1986 and the present, the volume of First-Class letters that every P&DC and P&DF cancelled and processed.

The Postal Service partially objected to answering subsection "b" of this interrogatory on June 8, 2001.³ The Service states that the interrogatory seeks facility-

¹ Douglas F. Carlson Motion to Compel the United States Postal Service to Respond to Interrogatory DFC/USPS-10(b), filed June 21, 2001 (Motion).

² Douglas F. Carlson Interrogatories to the United States Postal Service (DFC/USPS-1-18), filed May 21, 2001.

specific volume information. The Postal Service's position, and basis of its objection, is that facility-specific volume information is proprietary commercial information that should not be publicly disclosed. However, the Service states that it is seeking alternative ways to respond to the interrogatory without disclosing the facility-specific volume information.

The Postal Service filed a partial answer, including a library reference, to the interrogatory on June 12, 2001.⁴ The library reference provides the ratio of reported cancellations for a given holiday by facility, to the average daily cancellations for that facility for FY 2000. The information is provided for the period from 1992 to present.

The Postal Service filed a supplement to the partial answer on June 28, 2001.⁵ The Supplemental Answer replaces the original answer and includes three new charts. The charts are based on national cancellation volumes found in the Mail Condition Reporting System (MCRS) database. This database was used to generate the ratio information provided in the previously filed library reference. The first chart provides the national total MCRS cancellations by holiday. The second chart provides the ratio of national holiday cancellations by holiday, to the FY 2000 national average day cancellations. The final chart provides the MCRS annual cancellations, versus the RPW single piece First-Class Mail volumes.

The Carlson Motion requests the presiding officer to direct the Postal Service to provide an answer to DFC/USPS-10(b) in terms of facility-specific holiday cancellation volumes, either as a public record, or under protective conditions. Carlson makes

³ Partial Objection of the United States Postal Service to Carlson Interrogatories DFC/USPS-10 and 12, filed June 8, 2001 (Objection).

⁴ Responses of the United States Postal Service to Carlson Interrogatories DFC/USPS-1-18, filed June 12, 2001 (Partial Answer). Notice of the United States Postal Service of Filing of Library References USPS-LR-C2001-1/1, 2, and 3, filed June 12, 2001. Historical Holiday Mail Processing Data Provided in Response to DFC/USPS-10, USPS-LR-C2001/2, filed June 12, 2001.

⁵ Supplemental Response of the United States Postal Service to Carlson Interrogatory DFC/USPS-10, filed June 28, 2001 (Supplemental Answer).

several arguments in support of this motion based on his burden in this proceeding, the relevance of the interrogatory, and the commercial nature of the material.

Carlson discusses his substantial burden in proving that holiday service levels are inadequate, because the Postal Service controls most of the information concerning historical mailing patterns on holidays. He also argues that the burden of proof has shifted to the Complainant, and that this would not have occurred if the Postal Service had originally requested an advisory opinion as allegedly required. In light of this, he argues that he should be given reasonable and sufficient latitude to obtain responses to interrogatories reasonably calculated to lead to the discovery of admissible evidence. Furthermore, he alleges that the Postal Service is hiding behind a claim of proprietary commercial information to block his effort of proving that holiday service levels are not adequate.

Carlson discusses why facility-specific volume information is relevant to his Complaint. First, he argues that “to know that a particular geographic area generated a particular amount of mail on a holiday is highly probative of the question of adequacy of service.” Furthermore, “[h]istorical volume data provide an excellent insight into the public’s need for holiday mail processing.” Finally, the actual number of pieces of mail “provides some insight into the number of postal customers who need holiday service.”

Carlson argues that disclosing holiday cancellation volumes would not cause competitive harm to the Postal Service. He states that the cancellation volumes consist exclusively, or almost exclusively, of First-Class Mail, which is a monopoly product. Because First-Class Mail is a monopoly product, disclosing holiday cancellation volumes would not cause competitive harm. Therefore, the Postal Service has no basis for withholding this information. He also argues that commercial information should not be withheld unless releasing the information would pose a reasonable and identifiable risk of competitive harm.

Alternatively, if it is found that the facility-specific material contains proprietary commercial information that should not be publicly disclosed, Carlson states that he

would not oppose a future Postal Service request to provide the material under protective conditions.

The Postal Service responded in opposition to Carlson's Motion on June 28, 2001.⁶ The Postal Service devotes most of its argument to reviewing the information already provided in response to DFC/USPS-10(b), and arguing the limited relevance of providing further facility specific information. Noting that the Postal Service has provided information at the national level, the Service alleges that Carlson has not articulated why the issues need to be address at the facility level, rather than at the national level. Furthermore, the Postal Service disputes an assumption that knowing the number of mail pieces in the system on a holiday can provide insight into how many customers "need" mail processing on a particular holiday. Summarizing the Postal Service's arguments up to this point, the Service argues that it has provided sufficient information for conclusions to be drawn, the availability of facility-specific information may not provide further meaningful insight into the need for holiday service, and thus further facility-specific information is not necessary for the purposes of this proceeding.

In expanding on its original Objection, the Postal Service reviewed the history of avoiding disclosure of facility-specific information, and the Commission's recognition of this policy in various rulings. The Service states that its current approach in partially answering this interrogatory is consistent with this policy, and it has provided ample information for the parties to pursue all relevant and material lines of argument. Furthermore, the Postal Service disagrees that a different standard for disclosure of facility-specific information should apply to a complaint case than that which has consistently been applied in other Commission proceedings. Response at 6-7.

Finally, the Postal Service argues that disclosing facility-specific information under protective conditions would not be appropriate in this instance. Three reasons are provided. First, the requested information is not necessary, inferring that it would do little to advance the analysis in question. Second, protective conditions add a

⁶ Response of the United States Postal Service in Opposition to the Carlson Motion to Compel Regarding DFC/USPS-10(b), filed June 28, 2001 (Response).

procedural complexity to the process. Third, there is a concern for the potential of this material inadvertently being used outside of this complaint proceeding because both the complainant and the only intervenor are interested, and active, in a wide range of postal issues through participation in many cases.

Analysis. Ruling on this Motion requires an examination of the allegation that facility-specific holiday volume information is proprietary commercial information that requires protection from public disclosure, and an examination of the relevance of this information in relation to this proceeding. It also requires a discussion of the appropriateness of protective conditions. Upon review, the Motion to compel a response to DFC/USPS-10(b) is denied. Denial is without prejudice to allow for reconsideration of this issue should alternative explanations surface for the relevance of this information in evaluating the adequacy of service.

The Postal Service did not persuasively demonstrate that the facility-specific volume information sought in DFC/USPS-10(b) is proprietary commercial information that should not be publicly disclosed. It did not explain why the specific volume information is sensitive, or how the Postal Service would suffer competitive harm by disclosure. The Postal Service's entire argument, in this instance, rests on the Commission's history of protecting disclosure of facility specific information. The rulings cited by the Postal Service demonstrate only that the Commission reviews disclosure of facility-specific information on a case-by-case basis. The Commission has protected facility-specific information through protective conditions, redacting sensitive information, or occasionally denying specific motions to compel based on relevance. There has not been a general policy of nondisclosure.

Carlson convincingly argues that it is not necessary to protect facility-specific First-Class holiday volume information. He notes that First-Class Mail is a monopoly product, for which there is no effective competition. He concludes that disclosing holiday cancellation volumes for a monopoly product would not cause any competitive harm. Therefore, there is no basis for withholding this information.

Although Carlson makes the better argument that this information should not be protected to the point of nondisclosure, its relevance in the context of this Complaint still must be examined. The Postal Service has provided a somewhat responsive answer to the interrogatory by providing information at the national level and alternative information at the facility-specific level. This information should enable participants to analyze national trends, and to form conclusions with trend information at the facility-specific level. The participants should be able to make arguments consistent with the Commission's policy of examining issues on a national or substantially national basis, and not on an individual, localized, or temporary basis. Although facility-specific arguments may be supportive, the focus of the Complaint should remain at the national level.

Carlson has not carried his burden in demonstrating that facility-specific volume information is necessary, or will aid in advancing his Complaint other than to restate his facility-specific arguments based on the available ratio information. Relevance is directly related to the discovery principle that allows "discovery reasonably calculated to lead to admissible evidence during a noticed proceeding." Because the information appears only to be useful for restating arguments that can already be made, it is unlikely that the information will lead to further admissible material. Because no persuasive argument has been offered to explain how the requested information might lead to material evidence, the motion to compel is denied; however, this ruling is without prejudice should it subsequently appear that a relevant purpose for this information exists.

Protection of sensitive information is frequently provided through the implementation of protective conditions. Carlson argues for release of the material in question under protective conditions, if necessary. The Postal Service argues that protective conditions would not provide an appropriate resolution to this matter.

Where appropriate the Commission has not hesitated to develop and apply protective conditions to shield relevant sensitive information. The additional procedural burden that this causes is unavoidable. The Postal Service has a relatively high burden

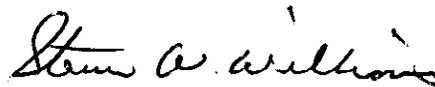
to show that information should not be disclosed, because the Service alone controls a vast amount of information critical to the furtherance of most proceedings. The Postal Service has not approached meeting this burden in this instance. However, disclosure of this material under protective conditions becomes moot because the motion to compel has been denied based on relevance.

In seeking to bolster its argument, the Postal Service raises several other issues that the Commission has never been asked to take into consideration when assessing the appropriateness of protective conditions. These must be clearly addressed at this time. The Commission does not discriminate in instituting protective conditions based on the status or profession of the individual(s) that may receive the material on behalf of participants. Similarly, participants who are individuals, corporations, consultants, or any other describable entity, including direct competitors, may seek access to materials subject to appropriate safeguards. The Postal Service's suggestion that in general individuals appearing on their own behalf are somewhat less trustworthy or capable of properly handling material under protective conditions than individuals appearing on behalf of some corporate entity has no basis. Additionally, the Commission does not discriminate based on past participation in Commission proceedings. Attempting to discriminate on this basis would unreasonably restrict the scope of participation in any Commission proceeding. This would be contradictory to the public policy of encouraging participation. Had Carlson identified relevant grounds for obtaining access to facility-specific cancellation or processing volumes, neither his intervention as an individual, nor his frequent participation in previous Commission proceedings, would in any way diminish his right to access.

RULING

The Douglas F. Carlson Motion to Compel the United States Postal Service to Respond to Interrogatory DFC/USPS-10(b), filed June 21, 2001, is denied without prejudice consistent with the text of this ruling.

By direction of Presiding Officer Ruth Y. Goldway:

A handwritten signature in cursive script that reads "Steven W. Williams".

Steven W. Williams
Acting Secretary